

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WILLIAMS PEST CONTROL
Respondent

Case No.: I-00-20085

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701 *et seq.*) and Title 20, Chapter 24 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-20085) served December 19, 2001, the Government charged Respondent Williams Pest Control with violations of 20 DCMR 2400.1 (failure to obtain operator or applicator license) and 20 DCMR 2400.2 (permitting the use of any pesticide by persons who are not certified or registered). The Notice of Infraction alleges that Respondent violated 20 DCMR 2400.1 and 20 DCMR 2400.2 at 300 Morse Street, N.E. on August 31, 2000, and seeks a fine of \$500.00 for each of the alleged violations. *See* 16 DCMR 3225.1(x), 3225.1(y).

On February 7, 2001, this administrative court issued an order finding Respondent in default for failing to timely answer the Notice of Infraction, and assessed a penalty in the amount

of \$1,000.00 pursuant to D.C. Code § 6-2712(f). On February 21, 2001, this administrative court received Respondent's plea of Deny to the charges listed in the Notice of Infraction, along with a request for a hearing.

By order dated March 2, 2001, this administrative court scheduled a hearing for March 21, 2001 and also set a March 12, 2001 deadline for the pre-filing of witness lists and exhibits. The March 2nd Order specifically provided that, should the Government, as prosecuting agent, fail to timely comply with the requirements of the order, the case would stand dismissed for want of prosecution "for the Government's failure to indicate the existence and availability of evidence through which it can meet its burden of proof and burden of going forward" under applicable law.

Because the Government failed to make any submission as set forth in the March 2nd Order, this matter was dismissed on March 19, 2001. On March 21, 2001, the Government filed a motion to reinstate the case to which Respondent elected not to respond.¹ Accordingly, by order dated April 13, 2001, this administrative court reinstated the case, and set a new hearing date for May 30, 2001 at 1:30 PM. Mr. Baldwin Williams, the charging inspector in this matter, appeared at the May 30, 2001 hearing on behalf of the Government. Respondent did not appear at this hearing, and, in accordance with the requirements of D.C. Code § 6-2713(b), the Government presented its case. The Government submitted several documents (PX-100-103, PX-200-201) which were admitted into evidence at the hearing.

¹ On March 26, 2001, this administrative court permitted the Respondent to respond to the Government's motion within ten (10) calendar days of the order's March 27, 2001 service date. No response has been received from the Respondent.

II. Findings of Fact

Based upon the testimony of the Government's witness, which this administrative court directly observed and found credible, the documentary evidence admitted at the hearing and the totality of the record, this administrative court makes the following findings:

1. On or about August 31, 2000, Respondent provided pest control services to a business entity called My-A-Co, located at 300 Morse Street, N.E. These pest control services included the use of a pesticide named "Contrac Blocks" (EPA Number 12455-79) to aid in the control and elimination of rats and mice.² PX-102
2. On or about October 27, 2000, Respondent provided pest control services to My-A-Co. These pest control services also included the use of Contrac Blocks. PX-101.
3. Although licensed for the commercial use of certain pesticides in Maryland through June 30, 2001, Respondent was not licensed as a pesticide operator³ in

² For purposes of 20 DCMR, Chapter 24, a "pesticide" is defined as "any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest; and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant." 20 DCMR 2299.1; 20 DCMR 2499.1. In turn, a "pest" is defined as "any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganisms (except viruses, bacteria, or other microorganism on or in living persons or other living animals) that commonly is considered to be detrimental to a person or mankind's interests, or which the Mayor may declare to be detrimental." 20 DCMR 2299.2; 20 DCMR 2499.1.

³ For purposes of 20 DCMR Chapter 24, a "pesticide operator" is defined as:

- (a) Any person who owns or manages a pesticide application business in which pesticides are applied upon the lands of another for hire or compensation; or

the District of Columbia for the period January 31, 2000 through January 9, 2001.
PX-100; PX-200.

4. Shortly after the Notice of Infraction was served, Respondent contacted the charging inspector to advise him that Respondent had received the Notice of Infraction but had not been aware that it was required to have a District of Columbia license for the commercial use of pesticides within the District of Columbia. Respondent subsequently provided the charging inspector with a copy of a current Maryland Pesticide Business License No. 1978. PX-200.
5. Respondent has offered no explanation for its failure to respond timely to the Notice of Infraction.

III. Conclusions of Law

1. On August 31, 2000, Respondent acted in the capacity of a pesticide operator in the District of Columbia without a license. Accordingly, Respondent violated 20 DCMR 2400.1, and is liable for a fine in the amount of \$500.00. *See* 16 DCMR 3225.1(x).

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- (b) Except as otherwise provided under the definition of “private applicator,” the owner or manager of any commercial firm, business, corporation, or private institution, who directly or through his or her employees used restricted use pesticides on property owned, managed, or leased by the commercial firm, business, corporation, or private institution; or
 - (c) Any District or other governmental agency whose officials or employees apply pesticides as part of their normal duties.
20 DCMR 2299.1; 20 DCMR 2499.1.

2. Respondent did not violate 20 DCMR 2400.2 on August 31, 2000. In order to have violated 20 DCMR 2400.2, Respondent would first have to have been licensed in the District of Columbia (“No *licensed* pesticide applicator . . . shall . . .”) (emphasis supplied).⁴ Because Respondent was not licensed in the District of Columbia on August 31, 2000, 20 DCMR 2400.2 does not apply to its activities. Accordingly, the charge of violating 20 DCMR 2400.2 shall be dismissed.
3. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, “the respondent shall be liable for the penalty established pursuant to § 6-2704(a)(2)(A).” Respondent’s plea to the Notice of Infraction was untimely. Based on the record, Respondent has not established good cause for any reduction or suspension of the statutory penalty of \$1,000.00 assessed by this administrative court’s order of February 7, 2001. Accordingly, Respondent remains liable for the full statutory penalty in the amount of \$1,000.00 in addition to the assessed fine.⁵ See D.C. Code § 6-2712(e)-(f).

⁴ This administrative court construes the word “licensed” as used in 20 DCMR 2400.2 to be read *in pari materia* with 20 DCMR 2400.1 in which the term “licensed” is modified by the phrase “by the Mayor in accordance with the provisions of Chapter 22 through 25 of this subtitle.” See also 20 DCMR 2299.1 (defining the term “Licensed certified applicator” as “an applicator who has completed the requirements for certification and holds a valid District license”). As such, the prerequisite for the application of 20 DCMR 2400.2 is that the “pesticide applicator who owns or manages a pesticide application business” have a District of Columbia license.

⁵ The Government’s failure of proof at the hearing with respect to 20 DCMR 2400.2 does not excuse Respondent’s failure to answer the charge in a timely fashion and the attendant penalty for that failure. D.C. Code § 6-2704(a)(2)(A) (“*In addition to the civil fine*, the following penalties may be imposed . . .”) (emphasis supplied). See *DOH v. Agape Cabbage Patch/Le Mae Early Child Development Center*, OAH Case Nos. I-00-40015/40281 (Amended Final Order, May 24, 2001) (comparing penalty assessment in failure of proof cases with failure to prosecute cases).

IV. Order

It is therefore, this ____ day of _____, 2001,

ORDERED, that the charge of violating 20 DCMR 2400.2 listed in Notice of Infraction (00-20085) is hereby **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that Respondent shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on any real or personal property owned by Respondent pursuant to D.C.

Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6-6-01**

Mark D. Poindexter
Administrative Judge